



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,988	07/18/2003	John A. Kappelhof	24793-20	3057
24256	7590	08/16/2007	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			DAWSON, GLENN K	
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
08/16/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/622,988	KAPPELHOF ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Glenn K. Dawson	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 02 August 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 31-46, 48-60, 62-73, 75 and 77-80 is/are pending in the application.
- 4a) Of the above claim(s) 38, 48, 49, 53-55, 65 and 66 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 31-37, 39-42, 44-46, 50, 52, 56-60, 62-64, 67-73, 75 and 77-80 is/are rejected.
- 7) Claim(s) 43 and 51 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

***Election/Restrictions***

Claims 38,48,49,53-55,65 and 66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 08-15-2006.

This action replaces the last Final office action as it failed to correctly identify the claims which contained allowable subject matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31-37,39-42,44-46,50,52,56-60,62-64,67-73,75 and 77-80 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelman-5190552.

Kelman discloses an IOL injector for receiving an IOL with haptics 42. The IOL is placed on a seat 33 with the haptics placed into guiding surfaces 34 and when it is pushed forward by a lens guiding arrangement 10,14, the haptics are driven up ramped guiding surfaces 11. A handle attached to a pusher and the IOL cartridge act to inject the IOL into the eye. If an IOL, such as that disclosed by Walman in RE 34424, were placed into Kelman's inserter, the ramped guiding surfaces would cause the IOL haptics to move or orient to a less curved state because the ramps would engage 34 and slide

up 36 causing it to straighten to a degree. The guiding arrangement straightens the IOL out between the 1<sup>st</sup> and 2<sup>nd</sup> points.

The guiding surfaces and guiding arrangement would operate as claimed depending on the type of IOL inserted and the specific type and shape of haptic employed.

***Response to Arguments***

Applicant's arguments filed 08-02-2007 have been fully considered but they are not persuasive.

As pointed out above, the claimed structure is found in Kelman's device and would operate as claimed if an IOL such as that disclosed by Walman were placed in the seat and pushed forward. The applicant is not claiming the combination of the stretching device and the IOL. Lacking a positive recitation of the IOL the examiner is free to use any IOL in order to see if placed in the injector of Kelman if the ramped surfaces would act to straighten the haptics. It is not necessary for the device to operate as disclosed by Kelman. All that is necessary is that if the IOL of Walman were placed in the seat of Kelman, and if the plunger pushed the IOL forward, what would happen to the haptics? The examiner contends that the mere structure of an IOL such as Walman's, and the lens guiding arrangement of Kelman would act together to cause the haptics of Walman to straighten to some degree as they are moved up the ramps and forward.

***Allowable Subject Matter***

Claims 43 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
06 August 2007